IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 67 of 2003
(Old No.1090 of 1991)

Commissioner of Sales Tax
U.P. Lucknow. ……Applicant/Revisionist

Vs.

Executive Engineer Provincial Division
Nainital …..Opposite Party

Learned Standing Counsel for the revisionist.

Hon'ble Prafulla C. Pant, J.

Heard.

Admit.

This revision, preferred under Section 11 (1) of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 08.05.1991, passed by the Sales Tax Tribunal, Haldwani.

The only question involved in the revision is whether cement supplied by the Public Works Department (Government department) to its contractors for completion of its work, is sale for the purposes of U.P. Sales Tax Act, 1948.

This revision pertains to the assessment year 1981-82. The assessee in this case is a Government Department i.e. P.W.D. Facts of the case are that the said department (assessee) supplies the cement to the contractors for the construction work assigned to them. The conditions on which the contractors are supplied the cement are being quoted below:-

"All materials so supplied to the contractor will become property of the contractor but shall not on any account be removed from the work until the whole work is certified to be completed by the Executive Engineer and shall at any time be open to inspection be the Engineer-in-charge. The Executive Engineer, shall, however have to take over any such materials, if unused at the time of the completion of termination of the contract at the specified issue rate or the current market rate whichever is less.

Provided always that the contractor shall not be entitled to any compensation for damages caused or loss sustained by him due to not or late supply of materials of stores by the Engineer-in-charge for the reasons beyond his control."

The aforesaid terms of the contract clearly show two things:- (1) That the assessee (Government Department), supplying the cement to the contractor. (2) The contractor has no right to lift the cement at his discretion.

As such, the supply of cement by the Government Department to contractor, for its own work, cannot be said to be sale for the purposes of Sales Tax Act, 1948, as it does not fulfill the definition of 'Sale", as contained under Section 2(h) of the said Act. In Northern India Caters Vs. Lt. Governor, Delhi, 1979, UPTC Pg. 826 and U.P. Awas Vikas Parishad, Bulandsahar Vs. Commissioner, Sales Tax, 1989 UPTC Pg. 1010, it has been clarified that supply of cement by the department to its contractor is not sale.

In view of aforesaid discussion, there is no error of law committed by learned Sales Tax Tribunal. As such, the revision is liable to be dismissed. And the same is dismissed in limine.

(Prafulla C. Pant, J.)

Dt : 10.08.2005

Sweta